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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,898	10/03/2005	Colin William Francis	U 015646-1	9656
140	7590	07/26/2006	EXAMINER SINGH, SUNIL	
LADAS & PARRY 26 WEST 61ST STREET NEW YORK, NY 10023			ART UNIT 3673	PAPER NUMBER

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/525,898	Applicant(s) FRANCIS, COLIN WILLIAM	
	Examiner Sunil Singh	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/25/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: page 2 line 9, it is unclear what "nut" applicant is referring to. Page 2 line 12, "they" appears to be incorrect. Page 4 line 17, "sleeve 36 is slidable ... sleeve 36" is confusing.

Appropriate correction is required.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show reference character "27" as described in the specification (page 4 line 28). Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If

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the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "23" has been used to designate both head and rod. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 line 1, "wherein, the pier" is redundant and is awkward.

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Claim 4, the "nut" appears to be mounted internally of the shaft not the "sleeve" as called for in claim 4.

Claim 4 line 4, "so that ... nut to apply" is confusing because the head does not case the "nut" to apply a force to the compaction member.

Claim 5 line 2, "they" appears to be incorrect.

Claim 6 and 7 appears as if "wherein" should be inserted after "claim 5" and "claim 6" respectively.

Claim 8, "abut said rod" is confusing.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1,2 ,5 are rejected under 35 U.S.C. 102(b) as being anticipated by Watts (US 3382937).

Watts discloses a pier to be driven into an earth surface to support, said pier including: an auger member (3) including a shaft (51) that is rotated in a first direction to drive the auger member into the ground surface; a soil compaction member (2) to compact soil around the shaft, said compaction member including a sleeve (53) surrounding the shaft and movable relative thereto longitudinally of the shaft (see abstract), and a transverse part (2) extending laterally from and attached to the sleeve to engage the soil

surrounding the shaft so that upon downward movement of the compaction member relative to the shaft soil surrounding the shaft is compacted; and wherein said sleeve is operatively associated with said shaft so that rotation of said compaction member causes rotation of said shaft (see the square cross section (31) of the shaft being housed in square receptacle (23) of the sleeve) to thereby drive said auger member. The pier includes a drive assembly (56) to move the compaction member relative to the shaft.

8. Claims 1,2 ,3,5 are rejected under 35 U.S.C. 102(b) as being anticipated by McFeetors et al. (US 4833846)

McFeetors et al. disclose a pier to be driven into an earth surface to support, said pier including: an auger member (11) including a shaft (10) that is rotated in a first direction to drive the auger member into the ground surface; a soil compaction member (17,18) to compact soil around the shaft, said compaction member including a sleeve (16) surrounding the shaft and movable relative thereto longitudinally of the shaft (see col. 3 line 15, col. 4 line 18+), and a transverse part (17,18) extending laterally from and attached to the sleeve to engage the soil surrounding the shaft so that upon downward movement of the compaction member relative to the shaft soil surrounding the shaft is compacted; and wherein said sleeve is operatively associated with said shaft so that rotation of said compaction member causes rotation of said shaft (see the square cross section (see col. 2 line 65+) of the shaft being housed in square receptacle (see Fig. 3, col. 3 line 15) of the sleeve) to thereby drive said auger member. The pier includes a

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drive assembly having a threaded rod (12) so that upon rotation of said head (14) the compaction member (17,18) moves relative to the shaft (see col. 4 line 18+).

9. Claims 1,2 ,5 are rejected under 35 U.S.C. 102(b) as being anticipated by Rust (US 5881978)

Rust discloses a pier to be driven into an earth surface to support, said pier including: an auger member (16) including a shaft (12) that is rotated in a first direction to drive the auger member into the ground surface; a soil compaction member (18,36, Fig.2) to compact soil around the shaft, said compaction member including a sleeve (see Fig. 2) surrounding the shaft and movable relative thereto longitudinally of the shaft (see col. 2 line 64+), and a transverse part (36) extending laterally from and attached to the sleeve to engage the soil surrounding the shaft so that upon downward movement of the compaction member relative to the shaft soil surrounding the shaft is compacted; and wherein said sleeve is operatively associated with said shaft so that rotation of said compaction member causes rotation of said shaft (this is the case when members 28, 32,34 connect shaft (12) to compaction member (18,36)) to thereby drive said auger member. The pier includes a drive assembly (this is the area of the structure where the user places his/her feet) to move the compaction member relative to the shaft.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watts.

Watts discloses the invention substantially as claimed. However, Watts lack apertures in plate (2). Apertures in auger type blade are old and well known in the art. It would have been considered obvious to one of ordinary skill in the art to modify Watts to include apertures in the plate (2) in order to move some material outwardly of the borehole.

12. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over McFeetors et al. in view of Edwards et al. (US 5224310)

McFeetors et al. disclose the invention substantially as claimed. However, McFeetors et al. lack apertures in plate (18). Edwards et al. teach apertures (see Fig. 2) in a base plate. It would have been considered obvious to one of ordinary skill in the art to modify McFeetors et al. to include apertures in the plate as taught by Edwards et al. in order to provide a means for installing the compaction plate.

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13. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace, III (US 6202368) in view of Classen (US 4279104).

Wallace, III discloses a pier to be driven into an earth surface to support, said pier including: an auger member (16) including a shaft (14) that is rotated in a first direction to drive the auger member into the ground surface; a soil compaction member (12,32) to compact soil around the shaft, said compaction member including a sleeve (12) surrounding the shaft and movable relative thereto longitudinally of the shaft (see col. 8 line 35+), and a transverse part (32) extending laterally from and contacts the sleeve to engage the soil surrounding the shaft so that upon downward movement of the compaction member relative to the shaft soil surrounding the shaft is compacted; and wherein said sleeve is operatively associated with said shaft so that rotation of said compaction member causes rotation of said shaft (see the square cross section (see col. 8 line 15) of the shaft being housed in square receptacle (see col. 3 line 50) of the sleeve) to thereby drive said auger member. The pier includes a drive assembly having a threaded rod (50) so that upon rotation of said rod (50) the compaction member (12,32) moves relative to the shaft (see col. 8 line 35+). Nut (48) mounted internally of shaft (14). Wallace, III discloses the invention substantially as claimed. However, Wallace, III lacks the transverse part being attached to the sleeve. Classen teaches to attach a transverse part (20) to a sleeve (12). It would have been considered obvious to one of ordinary skill in the art to modify Wallace, III by attaching his transverse part to the sleeve as taught by Classen since such an arrangement facilitate transporting the apparatus by reducing the number of separate parts one needs to carry.

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14. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace III in view of Classen as applied to claim 5 above, and further in view of Edwards et al.

Wallace, III (once modified) discloses the invention substantially as claimed. However, the (once modified) Wallace, III lack apertures in plate (32). Edwards et al. teach apertures (see Fig. 2) in a base plate. It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Wallace, III to include apertures in the plate as taught by Edwards et al. in order to provide a means for installing the pier structure.

15. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rust in view of Edwards et al. (US 5224310)

Rust discloses the invention substantially as claimed. However, Rust lack apertures in plate (36). Edwards et al. teach apertures (see Fig. 2) in a base plate. It would have been considered obvious to one of ordinary skill in the art to modify Rust to include apertures in the plate as taught by Edwards et al. in order to provide a means for installing the pier structure.

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Engle Patricia can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sunil Singh
Primary Examiner
Art Unit 3673



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7/21/06